Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID A. SAAR

Appeal No. 2000-0327
Application No. 08/745,330

ON BRIEF

Before BARRETT, LALL, and LEVY, Administrative Patent Judges.

LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-5 and 11-21[1], which are all of the claims pending in this application. Claims 6-10 have been canceled.

BACKGROUND

[1] The amendment (Paper No. 11, filed October 5, 1998) submitted subsequent to the final rejection was denied entry by the examiner (Paper No. 12, mailed October 20, 1998). The amendment attempted to cancel claim 17, which is not listed in appellant's brief as being on appeal. As claim 17 was never canceled, we consider the claim to be before us for decision on appeal.

Appellant's invention relates to a system for monitoring water consuming structures. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced as follows:

1. A system for monitoring a water consuming structure supplied by a water pipe comprising

means for determining that a selected volume of water has flowed through the pipe during a period of time not exceeding a predetermined period of time, and

means for transmitting an alarm signal in the event that said determining means determines that said selected volume of water has flowed through the pipe to said water consuming structure during a period of time not exceeding said predetermined period of time.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Gastouniotis et al. (Gastouniotis)	4,940,976	Jul. 10, 1990
Thompson	5,441,070	Aug. 15, 1995

The following rejections have been applied against the claims[2]:

[2] The final rejection included a rejection of claim 17 under 35 U.S.C. § 112, first paragraph. As the examiner has not repeated this rejection on appeal, we consider the rejection to have been withdrawn.

Claims 1, 2, 11, and 12 stand rejected under 35 U.S.C. § 102(b) being anticipated by Thompson.

Claims 3, 4, 13, 14, 16, 17, and 19-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Thompson.

Claims 5, 15, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Thompson in view of Gastouniotis.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 16, mailed March 29, 1999) and the final rejection (Paper No. 9, mailed September 9, 1998) for the examiner's complete reasoning in support of the rejections, and to appellant's brief (Paper No. 15, filed February 8, 1999) for appellant's arguments thereagainst. Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered. See 37 CFR 1.192(a).

OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejections advanced by the examiner, and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

We reverse.

We begin with the rejection of claims 1, 2, 11, and 12 under 35 U.S.C. § 102(b) as anticipated by Thompson.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp.,

713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it." While all elements of the claimed invention must appear in a single reference, additional references may be used to interpret the anticipating reference and to shed light on its meaning, particularly to those skilled in the art at the relevant time. See Studiengesellschaft Kohle v. Dart Indus., Inc., 726 F.2d 724, 726-727, 220 USPQ 841, 842-843 (Fed. Cir. 1984).

Appellant asserts (brief, page 4) that the examiner's rejection is predicated on the erroneous conclusion that Thompson discloses a monitor which determines the volume of flow.

The examiner's position[3] (answer, page 4) is that "means for determining a selected volume of water has flowed through the pipe has been continuous during a predetermined period of

[3] The examiner refers to the rejection set forth in the final rejection and then repeats the rejection, verbatim, in the brief. Accordingly, we will refer to the brief.

time, is addressed in col 2, lines 53-60 and col 6, line 68 to col 7, line 3."

Upon review of Thompson, we are in agreement with appellant (brief, page 5) that the flow sensors in Thompson only sense that there is water flow in the pipe, and that Thompson does not measure the volume of the flowing water. Thompson discloses (col. 12, lines 30-35) that "[f]rom the foregoing, it will be appreciated that a fluid management system is provided which acts as a water conservation tool, and which shuts down the fluid supply system to prevents [sic] leakage and loss when a fixture or water utilization device has been left running for too long." The portions of Thompson referred to by the examiner indicate that the flow timing means are responsive to each flow sensor's output signal for timing the period during which the flow sensor measures flow, and do not measure the volume of the flowing water. We find that the examiner has misinterpreted the language in Thompson (col. 6, lines 68 through col. 7, line 5) that "the flow sensors used on any system in accordance with the present invention should be capable of detecting extremely low (and forward) flow rates, preferably on the order of 0.1 gallons

per minute" to mean that Thompson is determining the volume of water flowing through the pipe. We interpret this language of Thompson as indicating that the flow detectors can detect an extremely low flow rate ("flow" or "no flow") through the pip; i.e., as long as there is at least about 0.1 gallons per minute flowing through the pipe, flow is detected. This detection of an extremely low flow rate is not the same as determining that a selected volume of water has flowed through the pipe, as required by independent claims 1 and 11.

We additionally find that Thompson further discloses (col. 2, lines 60-67) that each fixture has a selected maximum time limit for which each control valve may be opened. For example, a tub may only be allowed to have water flowing into it for up to 15 minutes. If it is unintentionally left on in excess of 15 minutes, the fluid management system will close the main shut-off valve thereby preventing it from overflowing and causing damage. From this teaching of Thompson, it is clear that Thompson presumes that the flow is a full flow that will fill the tub in a predetermined period of time. Thus, Thompson presumes the volume of water flowing, but does not measure the volume of the water flowing. If the volume of

water were measured, and the flow was very low, Thompson would have kept the water on until the tub was full. But Thompson does not do this, as Thompson does not determine the volume of the water flowing in a pipe.

We therefore agree with appellant (brief, page 5) that Thompson cannot distinguish one flow rate from another. Accordingly, we find that Thompson does not anticipate claims 1, 2, 11, and 12. The rejection of claims 1, 2, 11, and 12 under 35 U.S.C. § 102(b) is therefore reversed.

We turn next to the rejection of claims 3, 4, 13, 14, 16, 17, and 19-21 under 35 U.S.C. § 103(a) as unpatentable over Thompson. With respect to claims 3, 4, 13, 14, and 16, as these claims depend from independent claims 1 or 11, the rejection of claims 3, 4, 13, 14, and 16 under 35 U.S.C. § 103(a) is reversed. With respect to independent claim 19, the claim contains similar language to claim 1, with respect to "determining the volume of water that flows through the pipe during a single period of continuous flow." Accordingly, the rejection of claim 19, and claims 20 and 21, which depend therefrom, falls for the same reason as claims 1 and 11, as

discussed, supra. The rejection of claims 19-21 under 35 U.S.C. § 103(a) is therefore reversed.

We turn next to the rejection of claims 5, 15, and 18 under 35 U.S.C. § 103(a) as unpatentable over Thompson considered with Gastouniotis. The examiner (answer, page 8) relies upon Gastouniotis for a teaching of a data transmission system (claims 5 and 15) and a flow monitoring device having a target and transmitting means (claim 18). The findings with respect to Gastouniotis have not been argued by appellant. However, the examiner has not argued Gastouniotis with respect to any deficiencies in Thompson that relate to independent claims 1 and 11 from which claims 5, 15, and 18 directly or indirectly depend. Accordingly, the rejection of claims 5, 15, and 18 under
35 U.S.C. § 103(a) is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2, 11, and 12 under 35 U.S.C. § 102(b) is reversed.

The decision of the examiner to reject claims 3-5 and 13-21 under 35 U.S.C. § 103 is reversed.

REVERSED

KENNETH W. HAIRSTON Administrative Patent Judge	)	
LEE E. BARRETT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
STUART S. LEVY Administrative Patent Judge	)	

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